

# HOUSE BILL No. 1704

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-9-2; IC 31-19; IC 31-35-1; IC 35-46-1.

**Synopsis:** Adoption and termination of parental rights. Adds an attorney representing a birth mother to the list of persons allowed to serve actual notice of a potential adoption upon a putative father before the birth of a child. Provides that a putative father's implied consent to an adoption is also an implied consent to the termination of the parent-child relationship. Allows placement of a hard to place child in a prospective adoptive home without prior approval of an Indiana agency under certain circumstances. Provides that a putative father whose consent to an adoption has been implied is not barred from establishing paternity under certain conditions. Provides that consent to the termination of the parent-child relationship is not  
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**Effective:** July 1, 1999.

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**Kuzman**

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January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.

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required in certain circumstances. Provides that a person who allows for the payment of adoption related expenses under certain statutorily proscribed false pretenses commits adoption deception, a Class D felony. Requires a court to order a person who commits adoption deception to make restitution. Requires an attorney or child placing agency to inform a birth mother, or person who holds herself out to be a birth mother, of the penalties for committing adoption deception before transferring a payment for adoption related expenses.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE BILL No. 1704

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 31-9-2-51 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 51. "Hard to place  
3 child" or "hard to place children", for purposes of ~~IC 31-19-2-3 and~~  
4 ~~IC 31-19-2-7~~ **IC 31-19**, means a child who is or children who are  
5 disadvantaged:  
6 (1) because of:  
7 (A) ethnic background;  
8 (B) race;  
9 (C) color;  
10 (D) language;  
11 (E) physical, mental, or medical disability; or  
12 (F) age; or  
13 (2) because the child or children are members of a sibling group  
14 that should be placed in the same home.  
15 SECTION 2. IC 31-9-2-100 IS AMENDED TO READ AS

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IN 1704—LS 8029/DI 98+



FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 100. "Putative father", for purposes of ~~IC 31-19-4~~ and ~~IC 31-19-5~~ **IC 31-19 and IC 31-35-1**, means a male of any age who is alleged to be or claims that he may be a child's father but who:

(1) is not presumed to be the child's father under IC 31-14-7-1(1) or IC 31-14-7-1(2); and

(2) has not established paternity of the child:

(A) in a court proceeding; or

(B) by executing a paternity affidavit under IC 16-37-2-2.1; before the filing of an adoption petition.

SECTION 3. IC 31-19-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Before the birth of a child:

(1) a licensed child placing agency; ~~or~~

(2) an attorney representing prospective adoptive parents of the child; ~~or~~

**(3) an attorney representing the mother of the child;**

may serve the putative father of the child or cause the putative father to be served with actual notice that the mother of the child is considering an adoptive placement for the child.

SECTION 4. IC 31-19-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) Upon the filing of a petition for adoption:

(1) the licensed child placing agency sponsoring the adoption; or

(2) the attorney representing the prospective adoptive parents;

who gave actual notice or caused actual notice to be given to the putative father of the child shall submit to the court an affidavit setting forth the circumstances surrounding the service of actual notice, including the time, date, and manner in which the actual notice was provided.

**(b) If notice is served upon the putative father under section 1(3) of this chapter:**

**(1) the licensed child placing agency sponsoring the adoption; or**

**(2) the attorney representing the prospective adoptive parents;**

**shall submit to the court an affidavit prepared by the attorney representing the mother of the child. An affidavit filed under this subsection must contain the same information as an affidavit filed under subsection (a).**

SECTION 5. IC 31-19-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. Notice of the



potential adoption under this chapter must be provided to the putative father of the child in substantially the following form:

" \_\_\_\_\_ (putative father's name), who has been named as the father of the unborn child of \_\_\_\_\_ (birth mother's name), or who claims to be the father of the unborn child, is notified that \_\_\_\_\_ (birth mother's name) has expressed an intention to secure an adoptive placement for the child.

If \_\_\_\_\_ (putative father's name) seeks to contest the adoption of the unborn child, the putative father must file a paternity action to establish his paternity in relation to the unborn child not later than thirty (30) days after the receipt of this notice.

If \_\_\_\_\_ (putative father's name) does not file a paternity action not more than thirty (30) days after receiving this notice, or having filed a paternity action, is unable to establish paternity in relation to the child within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-11 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action, the putative father's consent to the adoption **or the voluntary termination of the putative father's parent-child relationship under IC 31-35-1, or both**, shall be irrevocably implied and the putative father loses the right to contest ~~both~~ the adoption, ~~and~~ the validity of his implied consent to the adoption, **the termination of the parent-child relationship, and the validity of his implied consent to the termination of the parent-child relationship**. In addition, the putative father loses the right to establish paternity of the child under IC 31-14 or in a court of another state when the court would otherwise be competent to obtain jurisdiction over the paternity action **except as provided in IC 31-19-9-17(b)**.

Nothing \_\_\_\_\_ (mother's name) or anyone else says to \_\_\_\_\_ (putative father's name) relieves \_\_\_\_\_ (putative father's name) of his obligations under this notice.

Under Indiana law, a putative father is a person who is named as or claims that he may be the father of a child born out of wedlock but who has not yet been legally proven to be the child's father.

For purposes of this notice, \_\_\_\_\_ (putative father's name) is a putative father under the laws in Indiana regarding adoption."

SECTION 6. IC 31-19-3-8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 1999]: **Sec. 8. The Indiana Rules of Trial Procedure do not apply to the giving of notice under this chapter.**

SECTION 7. IC 31-19-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1. Except as provided**



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by section 11 of this chapter, if:

(1) on or before the date the mother of a child executes a consent to the child's adoption, the mother has provided an attorney or agency arranging the adoption with the name and address of the putative father; and

(2) the putative father of the child has:

(A) failed or refused to consent to the adoption of the child; or

(B) not had the parent-child relationship terminated under

IC 31-35 (or IC 31-6-5 before its repeal);

the putative father shall be given notice of the adoption proceedings under Rule 4.1 of the Indiana Rules of Trial Procedure.

SECTION 8. IC 31-19-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. **Except as provided**

by section 11 of this chapter, if:

(1) on or before the date the mother of a child executes a consent to the child's adoption, the mother has not provided an attorney or agency arranging the adoption with the name or address, or both, of the putative father of the child; and

(2) the putative father of the child has:

(A) failed or refused to consent to the adoption of the child or has not had the parent-child relationship terminated under IC 31-35 (or IC 31-6-5 before its repeal); and

(B) registered with the putative father registry under IC 31-19-5 (or IC 31-6-5 before its repeal) within the period under IC 31-19-5-12;

the putative father shall be given notice of the adoption proceedings under Rule 4.1 of the Indiana Rules of Trial Procedure.

SECTION 9. IC 31-19-4-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13. **Only the rules of the Indiana Rules of Trial Procedure specified in this chapter apply to the giving of notice under this chapter.**

SECTION 10. IC 31-19-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Except:

(1) for:

(A) a child sought to be adopted by a stepparent;

(B) a child sought to be adopted by a blood relative; or

(C) a child received by the petitioner for adoption from an agency outside Indiana with the written consent of the division of family and children; or

(2) if the court in its discretion, after a hearing held upon proper notice, has waived the requirement for prior written approval;



a child may not be placed in a proposed adoptive home without the prior written approval of a licensed child placing agency or county office of family and children approved for that purpose by the division of family and children.

**(b) Notwithstanding subsection (a), a child may be placed in a proposed adoptive home without the prior written approval of a licensed child placing agency or county office of family and children in Indiana if all of the following conditions exist:**

**(1) The child sought to be adopted is a hard to place child.**

**(2) The petitioner for adoption is not a resident of Indiana.**

**(3) The prior written approval to place the child in the proposed adoptive home has been obtained from a:**

**(A) licensed child placing agency; or**

**(B) person or entity;**

**authorized under the laws or regulations of the state or country of residence of the petitioner for adoption to give approval of an adoptive placement in that state or country.**

SECTION 11. IC 31-19-9-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 15. **(a)** The putative father's consent to adoption of the child is irrevocably implied without further court action if the father:

**(1) fails to file a paternity action:**

**(A) under IC 31-14; or**

**(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;**

**not more than thirty (30) days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether the child is born before or after the expiration of the thirty (30) day period; or**

**(2) files a paternity action:**

**(A) under IC 31-14; or**

**(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;**

**during the thirty (30) day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-11 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.**

**(b) This section does not prohibit a putative father who meets the requirements of section 17(b) of this chapter from establishing paternity of the child.**

SECTION 12. IC 31-19-9-17 IS AMENDED TO READ AS



FOLLOWS [JULY 1, 1999]: Sec. 17. (a) A putative father whose consent to an adoption is implied under section 15 of this chapter is not entitled to establish paternity of the child:

- (1) in a court proceeding under IC 31-14; or
- (2) by executing a paternity affidavit under IC 16-37-2-2.1.

(b) **Notwithstanding subsection (a), a putative father who is barred from establishing paternity of the child under subsection (a) may establish paternity of the child in a court proceeding under IC 31-14 if:**

(1) **the putative father submits, together with the petition to establish paternity, an affidavit prepared by the:**

- (A) licensed child placing agency; or
- (B) attorney;

**that served notice or caused notice to be served upon the putative father under IC 31-19-3-1 stating that neither a petition for adoption nor a placement of the child in a proposed adoptive home is pending; and**

(2) **the court finds on the record, based on all the information available to the court, including an affidavit described under subdivision (1), that neither a:**

- (A) petition for adoption; nor
- (B) placement of the child in a prospective adoptive home; is pending.

SECTION 13. IC 31-35-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) If requested by the parents:

- (1) the county office of family and children; or
- (2) a licensed child placing agency;

may sign and file a verified petition with the juvenile or probate court for the voluntary termination of the parent-child relationship.

(b) The petition must:

- (1) be entitled "In the Matter of the Termination of the Parent-Child Relationship of \_\_\_\_\_, a child, and \_\_\_\_\_, the child's parent (or parents)"; and

(2) allege that:

- (A) the parents are the child's natural or adoptive parents;
- (B) the parents, including the alleged or adjudicated father if the child was born out of wedlock:

(i) knowingly and voluntarily consent to the termination of the parent-child relationship; or

(ii) **are not required to consent to the termination of the parent-child relationship under section 6(b) of this**





chapter;

(C) termination is in the child's best interest; and

(D) the petitioner has developed a satisfactory plan of care and treatment for the child.

SECTION 14. IC 31-35-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 4.5. The putative father's consent to the termination of the parent-child relationship is irrevocably implied without further court action if the father:**

(1) fails to file a paternity action under IC 31-14 or in a court located in another state that is competent to obtain jurisdiction over the paternity action, not more than thirty (30) days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether:

(A) the child is born before or after the expiration of the thirty (30) day period; or

(B) a petition for adoption or for the termination of the parent-child relationship is filed; or

(2) files a paternity action:

(A) under IC 31-14; or

(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;

during the thirty (30) day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding within a reasonable period determined under IC 31-14-21-9 through IC 31-14-21-11 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.

SECTION 15. IC 31-35-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 6. (a) Except as provided in subsection (b), the parents must give their consent in open court unless the court makes findings of fact upon the record that:**

(1) the parents gave their consent in writing before a person authorized by law to take acknowledgments;

(2) the parents were notified of their constitutional and other legal rights and of the consequences of their actions under section 12 of this chapter. and

(3) the parents failed to appear.

**(b) The consent of a parent to the termination of the parent-child relationship under this chapter is not required if:**

(1) consent to the termination of the parent-child relationship



1 is implied under section 4.5 of this chapter, if the parent is the  
 2 putative father; or

3 (2) the parent's consent to the adoption of the child would not  
 4 be required under:

5 (A) IC 31-19-9-9; or

6 (B) IC 31-19-9-10.

7 SECTION 16. IC 31-35-1-11 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. If the court makes  
 9 findings of fact upon the record that:

10 (1) one (1) parent has made a valid consent to the termination of  
 11 the parent-child relationship;

12 (2) the other parent:

13 (A) is required under this chapter to consent to the  
 14 termination of the parent-child relationship;

15 (B) cannot be located, after a good faith effort has been made  
 16 to do so; and

17 ~~(3) the other parent~~ (C) has been served with notice of the  
 18 proceedings in the most effective means under the  
 19 circumstances; and

20 ~~(4) (3)~~ the investigation that may be required by section 7 of this  
 21 chapter has been completed and entered on the record;

22 the court may enter a default judgment against the unavailable parent  
 23 and terminate as to both parents.

24 SECTION 17. IC 35-46-1-9 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) Except as  
 26 provided in subsection (b), a person who, with respect to an adoption,  
 27 transfers or receives any property in connection with the waiver of  
 28 parental rights, the termination of parental rights, the consent to  
 29 adoption, or the petition for adoption commits profiting from an  
 30 adoption, a Class D felony.

31 (b) This section does not apply to the transfer or receipt of:

32 (1) reasonable attorney's fees;

33 (2) hospital and medical expenses concerning childbirth and  
 34 pregnancy incurred by the adopted person's birth mother;

35 (3) reasonable charges and fees levied by a child placing agency  
 36 licensed under IC 12-17.4 or by a county office of family and  
 37 children;

38 (4) reasonable expenses for psychological counseling relating to  
 39 adoption incurred by the adopted person's birth parents;

40 (5) reasonable costs of housing, utilities, and phone service for the  
 41 adopted person's birth mother during the pregnancy and not more  
 42 than six (6) weeks after childbirth;



(6) reasonable costs of maternity clothing for the adopted person's birth mother;

(7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;

(8) any additional itemized necessary living expenses for the adopted person's birth mother during the pregnancy, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000) and that are disclosed to the court supervising the adoption; or

(9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:

(A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and

(B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician.

In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost wages any amounts paid to the adopted person's birth mother under subdivisions (5) and (8) and any unemployment compensation received by or owed to the adopted person's birth mother.

**(c) An attorney or licensed child placing agency shall inform a birth mother or a woman who holds herself out to be a birth mother of the penalties for committing adoption deception under section 9.5 of this chapter before the attorney or licensed child placing agency transfers a payment for adoption related expenses under subsection (b) in relation to the birth mother.**

SECTION 18. IC 35-46-1-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.5. (a) This section applies to a:**

**(1) birth mother; or**

**(2) woman who holds herself out to be a birth mother.**

**(b) A person described in subsection (a) who knowingly or intentionally benefits from adoption related expenses paid when the person:**

**(1) does not intend to place the person's child for adoption with the prospective adoptive parent; or**



1           (2) knows or should know that the person is not pregnant.  
2       commits adoption deception, a Class D felony.

3           (c) In addition to any other penalty imposed under this section,  
4       a court shall order the person who commits adoption deception to  
5       make restitution to:

6           (1) a prospective adoptive parent;  
7           (2) an attorney; or  
8           (3) a licenced child placing agency;  
9       that incurs an expense as a result of the offense.

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